

SENATE BILL NO. 501

INTRODUCED BY C. KAUFMANN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATED TO CHILD SUPPORT  
5 ENFORCEMENT; TRANSFERRING THE CHILD SUPPORT ENFORCEMENT DIVISION OF THE  
6 DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AND THE FUNCTIONS OF THE DIVISION TO  
7 THE DEPARTMENT OF JUSTICE; REVISING THE AMOUNT OF THE CHILD SUPPORT PASS-THROUGH  
8 PAYMENT AND INCOME DISREGARD FOR THOSE ON TEMPORARY ASSISTANCE FOR NEEDY FAMILIES;  
9 AMENDING SECTIONS 19-2-909, 19-20-306, 39-71-743, 40-4-204, 40-4-208, 40-4-209, 40-5-201, 40-5-303,  
10 40-5-315, 40-5-403, 40-5-701, 40-5-804, 40-5-901, 40-6-116, 40-6-117, 41-3-446, 41-5-1525, 53-2-613, AND  
11 53-4-260, MCA; AND PROVIDING AN EFFECTIVE DATE."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14  
15 **Section 1.** Section 19-2-909, MCA, is amended to read:

16 **"19-2-909. Execution or withholding for support obligation -- rulemaking.** (1) Benefits in the  
17 retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and  
18 income withholding for the payment of a participant's support obligation.

19 (2) For purposes of this section, the following definitions apply:

20 (a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department  
21 of ~~public health and human services~~ justice when providing support enforcement services under Title IV-D of the  
22 Social Security Act.

23 (b) "Income withholding" means an income-withholding order issued under the provisions of Title 40,  
24 chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

25 (c) "Participant" means an identified person who is a member or an actual or potential beneficiary,  
26 survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6,  
27 7, 8, 9, 13, or 17.

28 (d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

29 (3) The execution or income-withholding order may not require:

30 (a) a type or form of benefit, option, or payment not available to the affected participant under the



1 appropriate retirement system or plan; or

2 (b) an amount or duration of payment greater than that available to a participant under the appropriate  
3 retirement system or plan.

4 (4) An execution or income-withholding order applied to a defined benefit retirement plan may provide  
5 for payment only as follows:

6 (a) Retirement benefit payments or refunds may be apportioned by directing payment of a percentage  
7 of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

8 (b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under  
9 this section is the monthly benefit amount that would have been payable on the date of termination of service if  
10 the member had retired without disability or death.

11 (c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned  
12 only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as  
13 existing benefit payments.

14 (5) With respect to a defined contribution plan, an execution or income-withholding order may provide  
15 for payment to an alternate payee only as follows:

16 (a) The vested account of the participant may be apportioned by directing payment of either a percentage  
17 or a fixed amount. The total amount apportioned may not exceed the amount in the participant's vested account.  
18 The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may  
19 be established for an alternate payee, but money in the account must be totally disbursed to the alternate payee  
20 as soon as feasible upon the participant's termination of service or death.

21 (b) If the participant is receiving periodic payments or an annuity provided under the plan, those  
22 payments may be apportioned as a percentage of the amount payable to the participant. Payments to the  
23 alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments  
24 may not total more than the amount payable to the payee.

25 (6) The duration of monthly or other periodic payments apportioned from a defined benefit or defined  
26 contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The  
27 duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate  
28 payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate  
29 payee's death and may be transferred by inheritance.

30 (7) The board shall adopt rules to provide for the administration of execution or income-withholding

1 orders."

2

3 **Section 2.** Section 19-20-306, MCA, is amended to read:

4 **"19-20-306. Execution or withholding for support obligation.** (1) Benefits in the retirement system  
5 are subject to execution and income withholding for the payment of a participant's support obligation.

6 (2) For purposes of this section, the following definitions apply:

7 (a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department  
8 of ~~public health and human services~~ justice when providing support enforcement services under Title IV-D of the  
9 Social Security Act.

10 (b) "Income withholding" means an income-withholding order issued under the provisions of Title 40,  
11 chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

12 (c) "Participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant  
13 of a retirement system designated pursuant to this chapter.

14 (d) "Support obligation" has the meaning provided in 40-5-403 for support order.

15 (3) The execution or income-withholding order may not require:

16 (a) a type or form of benefit, option, or payment not available to the affected participant under the  
17 retirement system; or

18 (b) an amount or duration of payment greater than that available to a participant under the retirement  
19 system.

20 (4) The execution or income-withholding order may ~~only~~ provide for payment only as follows:

21 (a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by  
22 directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the  
23 amount payable to the participant.

24 (b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under  
25 this section is the monthly benefit amount that would have been payable on the date of termination of service if  
26 the member had retired without disability or death.

27 (c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned  
28 only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as  
29 existing benefit payments.

30 (d) Payments must be limited to the life of the appropriate participant. The duration of payments under

1 this section may be further limited only to a specified maximum time or the life of a specified participant. Payments  
2 may also be limited to a specific amount per a month if the number of payments is specified."

3

4 **Section 3.** Section 39-71-743, MCA, is amended to read:

5 **"39-71-743. Assignment or attachment of payments.** (1) Payments under this chapter may not be  
6 assignable, subject to attachment or garnishment, or held liable in any way for debts, except:

7 (a) as provided in 71-3-1118;

8 (b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or  
9 past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established  
10 by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state  
11 law;

12 (c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to this chapter; or

13 (d) for workers' compensation benefits payable to an injured worker to pay restitution to an insurer  
14 whenever the injured worker is subject to court-ordered restitution for theft of workers' compensation benefits.  
15 The insurer shall notify the injured worker in writing of the withholding of any court-ordered restitution from the  
16 injured worker's benefits.

17 (2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support  
18 as follows:

19 (a) for any periodic payment, an amount up to the percentage amount established in the guidelines  
20 promulgated by the department of public health and human services pursuant to 40-5-209; or

21 (b) for any lump-sum award, an amount up to that portion of the award that is necessary to pay current  
22 child support and a past-due child support obligation.

23 (3) After determination that the claim is covered under the Workers' Compensation Act, the liability for  
24 payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided  
25 in 39-71-704(7), a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability  
26 is accepted by the insurer."

27

28 **Section 4.** Section 40-4-204, MCA, is amended to read:

29 **"40-4-204. Child support -- orders to address health insurance -- withholding of child support.**

30 (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall

1 order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the  
2 child's support, without regard to marital misconduct.

3 (2) The court shall consider all relevant factors, including:

4 (a) the financial resources of the child;

5 (b) the financial resources of the parents;

6 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

7 (d) the physical and emotional condition of the child and the child's educational and medical needs;

8 (e) the age of the child;

9 (f) the cost of day care for the child;

10 (g) any parenting plan that is ordered or decided upon; and

11 (h) the needs of any person, other than the child, whom either parent is legally obligated to support.

12 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine  
13 the child support obligation by applying the standards in this section and the uniform child support guidelines  
14 adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be  
15 used in all cases, including cases in which the order is entered upon the default of a party and those in which the  
16 parties have entered into an agreement regarding the support amount. A verified representation of the defaulting  
17 parent's income, based on the best information available, may be used when a parent fails to provide financial  
18 information for use in applying the guidelines. The amount determined under the guidelines is presumed to be  
19 an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the  
20 application of the standards and guidelines is unjust to the child or to any of the parties or that it is inappropriate  
21 in that particular case.

22 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state  
23 its reasons for that finding. Similar reasons must also be stated in a case in which the parties have agreed to a  
24 support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must  
25 include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

26 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's  
27 support, the court shall state its reasons for not ordering child support.

28 (d) Child support obligations established under this section are subject to the registration and processing  
29 provisions of Title 40, chapter 5, part 9.

30 (4) Each temporary or final district court judgment, decree, or order establishing a child support obligation

1 under this title and each modification of a final order for child support must include a medical support order as  
2 provided for in Title 40, chapter 5, part 8.

3 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is  
4 included in the support order, a support obligation established by judgment, decree, or order under this section,  
5 whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be  
6 enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A  
7 support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment  
8 arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support  
9 without need for an amendment to the support order or for any further action by the court.

10 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order must  
11 include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may  
12 be subject to income-withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning  
13 statement in a judgment or order does not preclude the use of withholding procedures.

14 (c) If a support order subject to income withholding is expressed in terms of a monthly obligation, the  
15 order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay  
16 period. When an order is annualized and withheld on a weekly or biweekly basis under this section, the support  
17 withheld from the obligor may be retained by the obligee when it exceeds the obligor's monthly support obligation  
18 if the excess support is a result of annualized withholding.

19 (d) If an obligor is exempted from paying support through income withholding, the support order must  
20 include a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act,  
21 support payments must be paid through the department of ~~public health and human services~~ justice as provided  
22 in 40-5-909.

23 (6) (a) Each district court judgment, decree, or order that establishes paternity or establishes or modifies  
24 a child support obligation must include a provision requiring the parties to promptly file with the court and to  
25 update, as necessary, information on:

26 (i) the party's identity, residential and mailing addresses, telephone number, [social security number,]  
27 and driver's license number;

28 (ii) the name, address, and telephone number of the party's employer; and

29 (iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or  
30 health benefit plan, the policy identification number, the names of the persons covered, and any other pertinent

1 information regarding coverage or, if the child is not covered, information as to the availability of coverage for the  
2 child through the party's employer.

3 (b) The court shall keep the information provided under subsection (6)(a) confidential except that the  
4 information may be provided to the department of ~~public health and human services~~ justice for use in  
5 administering Title IV-D of the Social Security Act.

6 (c) The order must also require that in any subsequent child support enforcement action, upon sufficient  
7 showing that diligent effort has been made to ascertain the location of the party, the district court or the  
8 department of ~~public health and human services~~ justice, if the department is providing services under Title IV-D  
9 of the Social Security Act, may consider due process requirements for notice and service of process met with  
10 respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the  
11 party's employer's address reported to the court.

12 (7) A judgment, decree, or order establishing a child support obligation under this part may be modified  
13 or adjusted as provided in 40-4-208 or, if the department of ~~public health and human services~~ justice is providing  
14 services under Title IV-D of the Social Security Act, may be modified or adjusted by the department as provided  
15 for in 40-5-271 through 40-5-273, 40-5-277, and 40-5-278.

16 (8) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation  
17 must include a provision requiring the child support obligation to be paid, without need for further court order:

18 (i) to the person with whom the child resides by legal order;

19 (ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical care  
20 and control of the child to another person, organization, or agency, to the person, organization, or agency to  
21 whom physical custody has been relinquished;

22 (iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason to receive  
23 or collect the child support obligation, to the person, organization, or agency having the right to receive or collect  
24 the payment; or

25 (iv) to the court for the benefit of the minor child.

26 (b) When the department of ~~public health and human services~~ justice is providing services under Title  
27 IV-D of the Social Security Act, payment of support must be made through the department for distribution to the  
28 person, organization, or agency entitled to the payment.

29 (c) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject to the  
30 requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order or for any

1 further action by the court.

2 (9) A judgment, decree, or order that establishes or modifies a child support obligation must include a  
 3 provision that if a parent or guardian is the obligee under a child support order and is obligated to pay a  
 4 contribution for the same child under 41-3-438, 41-5-1304, or 41-5-1512, the parent or guardian assigns and  
 5 transfers to the department of ~~public health and human services~~ justice all rights that the parent or guardian may  
 6 have to child support that are not otherwise assigned under 53-2-613. (Bracketed language terminates on  
 7 occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

8

9 **Section 5.** Section 40-4-208, MCA, is amended to read:

10 **"40-4-208. Modification and termination of provisions for maintenance, support, and property**  
 11 **disposition.** (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to  
 12 maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion  
 13 for modification.

14 (2) (a) Except as provided in 40-4-251 through 40-4-258, whenever the decree proposed for modification  
 15 does not contain provisions relating to maintenance or support, modification under subsection (1) may ~~only~~ be  
 16 made only within 2 years of the date of the decree.

17 (b) Except as provided in 40-4-251 through 40-4-258, whenever the decree proposed for modification  
 18 contains provisions relating to maintenance or support, modification under subsection (1) may ~~only~~ be made only:

19 (i) upon a showing of changed circumstances so substantial and continuing as to make the terms  
 20 unconscionable;

21 (ii) upon written consent of the parties; or

22 (iii) upon application by the department of ~~public health and human services~~ justice, whenever the  
 23 department of ~~public health and human services~~ justice is providing services under Title IV-D of the federal Social  
 24 Security Act. The support obligation must be modified, as appropriate, in accordance with the guidelines  
 25 promulgated under 40-5-209. Except as provided in 40-4-251 through 40-4-258, a modification under this  
 26 subsection may not be made within 12 months after the establishment of the order or the most recent  
 27 modification.

28 (c) The nonexistence of a medical support order, as defined in 40-5-804, or a violation of a medical  
 29 support order justifies an immediate modification of child support in order to:

30 (i) provide for the actual or anticipated costs of the child's medical care;

1 (ii) provide or maintain a health benefit plan or individual health insurance coverage for the child; or  
2 (iii) eliminate any credit for a medical support obligation when it has been permitted or used as a credit  
3 in the determination of the child support obligation.

4 (3) The provisions as to property disposition may not be revoked or modified by a court except:

5 (a) upon written consent of the parties; or

6 (b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws  
7 of this state.

8 (4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future  
9 maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

10 (5) Provisions for the support of a child are terminated by emancipation of the child or the child's  
11 graduation from high school if the child is enrolled in high school, whichever occurs later, but in no event later  
12 than the child's 19th birthday, unless the termination date is extended or knowingly waived by written agreement  
13 or by an express provision of the decree. Provisions for the support of a child do not terminate upon the death  
14 of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support  
15 may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the  
16 circumstances.

17 (6) The decree may be modified, as provided in 40-4-251 through 40-4-258, for failure to disclose assets  
18 and liabilities."

19

20 **Section 6.** Section 40-4-209, MCA, is amended to read:

21 **"40-4-209. Security or guaranty to secure support.** (1) Upon a verified application that is made by a  
22 person authorized to enforce or collect a child support obligation or by the department of ~~public health and human~~  
23 ~~services justice~~ justice and that shows that a person obligated to pay child support or maintenance pursuant to court or  
24 administrative order is delinquent in an amount equal to the total of 6 months' support payments, the court may  
25 direct the obligated person to appear and show cause why an order should not be entered ordering that the  
26 obligated person post bond, give a mortgage, or provide other security or guaranty for the payment of the  
27 delinquency.

28 (2) If the court finds that a delinquency greater than the total of 6 months of support is owed and that the  
29 obligated person has the ability to post bond, give a mortgage, or provide security or other guaranty, the court  
30 may enter an order requiring the obligated person to post bond, give a mortgage, or provide security or guaranty

1 for ~~so~~ as long as there is a support delinquency.

2 (3) The bond or other security may be in an amount up to the total support due for a 2-year period and  
3 must be approved by the court. The bond must include the name and address of the issuer. Any person issuing  
4 a bond under this section ~~must~~ shall, if the bond is canceled, notify the court and the person or public agency  
5 entitled to receive payments under the support order.

6 (4) If the person obligated to pay child support or maintenance fails to make payments as required by  
7 the court or administrative order, the person or public agency entitled to receive payment may recover on the  
8 bond or other security. The amount recovered on the bond or other security must first be applied toward  
9 satisfaction of any support arrearages.

10 (5) The department of ~~public health and human services~~ justice shall adopt guidelines that take into  
11 account the payment record of the obligated person, the availability of other remedies, and other considerations  
12 ~~which~~ that it determines relevant for determining whether the procedure provided in this section would carry out  
13 the purpose of enforcing payments of child support or would be appropriate in the circumstances. If after  
14 application of the guidelines the department of ~~public health and human services~~ justice determines that an  
15 application for an order requiring security is not appropriate, it may not request the order."  
16

17 **Section 7.** Section 40-5-201, MCA, is amended to read:

18 **"40-5-201. Definitions.** As used in this part, the following definitions apply:

19 (1) "Alleged father" means a person who is alleged to have engaged in sexual intercourse with a child's  
20 mother during a possible time of conception of the child or a person who is presumed to be a child's father under  
21 the provisions of 40-6-105.

22 (2) (a) "Child" means:

23 (i) a person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a  
24 member of the armed forces of the United States;

25 (ii) a person under 19 years of age and still in high school;

26 (iii) a person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th  
27 birthday; or

28 (iv) in a IV-D case, a person for whom:

29 (A) support rights are assigned under 53-2-613;

30 (B) a public assistance payment has been made;

1 (C) the department is providing support enforcement services under 40-5-203; or

2 (D) the department has received a referral for IV-D services from an agency of another state or an Indian  
3 tribe under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal  
4 Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or Title IV-D of the Social  
5 Security Act.

6 (b) The term may not be construed to limit the ability of the department to enforce a support order  
7 according to its terms when the order provides for support to extend beyond the child's 18th birthday.

8 (3) "Department" means the department of ~~public health and human services~~ justice provided for in  
9 2-15-2001.

10 (4) "Director" means the director of the ~~department of public health and human services~~ child support  
11 enforcement division of the department of justice or the director's authorized representative.

12 (5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

13 (6) "Hearings officer" or "hearings examiner" means the hearings officer appointed by the department  
14 for the purposes of this chapter.

15 (7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a  
16 child or children.

17 (8) "Obligee" means:

18 (a) a person to whom a duty of support is owed and who is receiving support enforcement services under  
19 this part; or

20 (b) a public agency of this or another state or an Indian tribe having the right to receive current or  
21 accrued support payments.

22 (9) "Obligor" means a person, including an alleged father, who owes a duty of support.

23 (10) "Parent" means the natural or adoptive parent of a child.

24 (11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either  
25 that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the  
26 natural father of a child. The genetic markers may be identified from a person's blood or tissue sample. The blood  
27 or tissue sample may be taken by blood drawing, buccal swab, or any other method approved by the American  
28 association of blood banks. Paternity blood tests may include but are not limited to the human leukocyte antigen  
29 test and DNA probe technology.

30 (12) "Public assistance" means any type of monetary or other assistance for a child, including medical

1 and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living,  
2 if assistance has been furnished with respect to the child by a state or county agency of this state or any other  
3 state.

4 (13) "Support debt" or "support obligation" means the amount created by:

5 (a) the failure to provide for the medical, health, and support needs of a child under the laws of this or  
6 any other state or under a support order;

7 (b) a support order for spousal maintenance of the custodial parent; or

8 (c) fines, fees, penalties, interest, and other funds and costs that the department is authorized under this  
9 chapter to collect by the use of any procedure available for the payment, enforcement, and collection of child  
10 support or spousal maintenance or support.

11 (14) "Support order" means an order, whether temporary or final, that:

12 (a) provides for the payment of a specific amount of money, expressed in periodic increments or as a  
13 lump-sum amount, for the support of the child, including an amount expressed in dollars for medical and health  
14 needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific  
15 to the needs of the child;

16 (b) is issued by:

17 (i) a district court of this state;

18 (ii) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

19 (iii) an administrative agency pursuant to proceedings under this part; or

20 (iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and  
21 process similar to those of the department under this part; and

22 (c) when the context requires, includes:

23 (i) judgments and orders providing periodic payments for the maintenance or support of the custodial  
24 parent of a child receiving services under this chapter; and

25 (ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the  
26 department is authorized under this chapter to collect by the use of any procedure available for the payment,  
27 enforcement, and collection of child support or spousal maintenance or support.

28 (15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated  
29 under the act."

30

1           **Section 8.** Section 40-5-303, MCA, is amended to read:

2           **"40-5-303. Petition for income deduction -- who may initiate.** (1) If an obligor is exempted from  
3 immediate income withholding under 40-5-315 or is not otherwise subject to an income-withholding order, the  
4 obligor's income may be withheld for the payment of child support if the obligor becomes delinquent in the  
5 payment of support, a person or entity referred to in subsection (2) notifies the obligor that income withholding  
6 will be initiated if the delinquent amount is not paid within 8 days of the date of the notice, and the obligor does  
7 not pay the delinquent amount within that time. Notification that income withholding will be initiated if a  
8 delinquency is not paid within 8 days of the date of the notice is not necessary if such a notice was given for a  
9 prior delinquency and the prior delinquency in fact existed. This notice is different from the notice required by  
10 40-5-305.

11           (2) Income withholding for the payment of child support may be initiated by:

12           (a) the person named as the recipient of the child support payments in the child support order;

13           (b) the child or the guardian of the child named in the child support order; or

14           (c) the department of ~~public health and human services~~ justice.

15           (3) (a) At the request of an initiating party who has determined that an obligor is delinquent, the district  
16 court shall issue an order for income deductions for immediate service upon the obligor's payor or payors. The  
17 order is limited to current support unless modified to include arrears as provided in 40-5-308.

18           (b) At the same time an income deduction order is issued, the requesting party shall notify the obligor,  
19 as provided in 40-5-305<sub>1</sub>, that income deductions have been initiated.

20           (4) Deductions under this section for current support may be terminated only if:

21           (a) the district court determines after a hearing that the obligor was not delinquent when the deduction  
22 order was issued;

23           (b) the obligation to pay support has terminated and all delinquencies are paid in full; or

24           (c) the department of ~~public health and human services~~ justice has superseded the deduction order  
25 under authority of Title 40, chapter 5, part 4.

26           (5) As used in this part, the following definitions apply:

27           (a) "Employer" includes a payor.

28           (b) (i) "Income" means any form of periodic payment to a person, regardless of source, including  
29 commissions, bonuses, workers' compensation, disability benefits, payments under a pension or retirement  
30 program, interest and earnings, and wages.

1 (ii) Income does not include:

2 (A) an amount, other than creditor claims, required by law to be withheld, including federal, state, and  
3 local taxes and social security; or

4 (B) an amount exempted from judgment, execution, or attachment by federal or state law.

5 (c) "Payor" means any entity that pays income to an obligor on a periodic basis and includes any person,  
6 firm, corporation, association, employer, trustee, political subdivision, or state agency or an agent of any one of  
7 them, subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure."  
8

9 **Section 9.** Section 40-5-315, MCA, is amended to read:

10 **"40-5-315. Immediate income deductions.** (1) Notwithstanding any provision in this part requiring a  
11 delinquency as a prerequisite to an order for income deductions, except as provided in subsection (2), the income  
12 of a person obligated to pay child support by an order of a district court issued after October 1, 1991, is subject  
13 to an immediate deduction order on the effective date of the order.

14 (2) An obligor's income is not subject to deduction under this section in any case in which the district  
15 court finds:

16 (a) that there is good cause not to require immediate deduction; or

17 (b) that there is an alternative arrangement between the parties for the payment of support that provides  
18 sufficient security to ensure compliance with the arrangement.

19 (3) (a) For the purposes of subsection (2), a finding of good cause not to require immediate deduction  
20 must, at a minimum, be based on:

21 (i) a written determination and explanation by the district court as to why implementation of immediate  
22 deductions is not in the best interests of the child; and

23 (ii) in cases involving the modification of support orders, proof of timely payment of previously ordered  
24 support.

25 (b) As used in subsection (2)(b), "alternative arrangement" means a written agreement between the  
26 obligor and obligee and, in cases in which there is an assignment of support rights under 53-2-613, the  
27 department of ~~public health and human services~~ justice that has been approved and entered into the record by  
28 the district court that issued or modified the support order.

29 (4) The clerk of court shall administer immediate income deductions under this section. The clerk of  
30 court, at any time after docketing the support order or modification of a support order, at the request of the

1 obligee, and without need for amendment to the support order or for any further action by the district court, shall  
 2 issue the order for income deductions for service upon the obligor's payor. The deduction order must direct the  
 3 payor to promptly deliver the amount deducted to the department of ~~public health and human services~~ justice,  
 4 as provided in 40-5-909, for distribution to the obligee.

5 (5) Deductions under this section may be terminated only when:

6 (a) the obligation to pay support has terminated and all arrearages are paid in full;

7 (b) the obligor requests termination and the obligee and obligor have entered into an alternative  
 8 arrangement as set forth in subsection (2)(b); or

9 (c) the department of ~~public health and human services~~ justice has superseded the deduction order  
 10 under authority of Title 40, chapter 5, part 4.

11 (6) If a delinquency occurs subsequent to issuance of an immediate deduction order or if arrearages  
 12 occur prior to beginning the deductions, the arrearages may be added to the deduction order only after  
 13 compliance with the notice of hearing requirements of 40-5-305.

14 (7) (a) After October 1, 1991, whenever a support order is registered as provided by 40-5-184 or other  
 15 law, the support order is subject to immediate orders to deduct income under this section.

16 (b) Withholding income under this section must be imposed when an obligor has income derived from  
 17 within this state and the support order was issued in another state.

18 (8) This section applies only to support orders that are not being enforced by the department of ~~public~~  
 19 ~~health and human services~~ justice under Title IV-D of the Social Security Act. The withholding of income for  
 20 support orders being enforced by the department of justice is provided for in Title 40, chapter 5, part 4, and those  
 21 procedures, if applicable, supersede the provisions of this section."

22

23 **Section 10.** Section 40-5-403, MCA, is amended to read:

24 **"40-5-403. Definitions.** As used in this part, the following definitions apply:

25 (1) "Alternative arrangement" means a written agreement between the obligor and obligee, and the  
 26 department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the  
 27 record of the court or administrative authority issuing or modifying the support order.

28 (2) "Department" means the department of ~~public health and human services provided for in 2-15-2201~~  
 29 justice provided for in 2-15-2001.

30 (3) "Employer" includes a payor.

1 (4) "Income" means any form of periodic payment to a person, regardless of source, including  
2 commissions, bonuses, workers' compensation, disability payments, payments under a pension or retirement  
3 program, interest, and earnings and wages. However, income does not include:

4 (a) any amount required by law to be withheld, other than creditor claims, including federal, state, and  
5 local taxes and social security; and

6 (b) any amounts exempted from judgment, execution, or attachment by federal or state law.

7 (5) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or  
8 another state or an Indian tribe to which a person has assigned the right to receive current and accrued support  
9 payments.

10 (6) "Obligor" means a person who owes a duty to make payments under a support order.

11 (7) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm,  
12 corporation, association, employer, trustee, political subdivision, state agency, or any agent ~~thereof~~ of a listed  
13 entity who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil  
14 Procedure or any employer under the Uniform Interstate Family Support Act contained in part 1 of this chapter.

15 (8) "Support order" has the meaning provided in 40-5-201.

16 (9) "IV-D agency" or "Title IV-D agency" means the agency responsible for the provision of services  
17 under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq."

18

19 **Section 11.** Section 40-5-701, MCA, is amended to read:

20 **"40-5-701. Definitions.** As used in this part, the following definitions apply:

21 (1) (a) "Child" means:

22 (i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the  
23 armed forces of the United States;

24 (ii) a person under 19 years of age who is still in high school;

25 (iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person  
26 reaching 18 years of age; and

27 (iv) in IV-D cases, a person for whom:

28 (A) support rights are assigned under 53-2-613;

29 (B) a public assistance payment has been made;

30 (C) the department is providing support enforcement services under 40-5-203; or

1 (D) the department has received a referral for IV-D services under the provisions of the Uniform  
2 Interstate Family Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform  
3 Reciprocal Enforcement of Support Act, or Title IV-D of the Social Security Act.

4 (b) The term may not be construed to limit the ability of the department to enforce a support order  
5 according to its terms when the order provides for support extending beyond the time the child reaches 18 years  
6 of age.

7 (2) "Delinquency" means a support debt or support obligation due under a support order in an amount  
8 greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a  
9 license.

10 (3) "Department" means the department of ~~public health and human services~~ justice provided for in  
11 2-15-2001.

12 (4) "License" means a license, certificate, registration, permit, or any other authorization issued by an  
13 agency of the state of Montana granting a person a right or privilege to engage in a business, occupation,  
14 profession, recreational activity, or any other privilege that is subject to suspension, revocation, forfeiture,  
15 termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

16 (5) "Licensing authority" means any department, division, board, agency, or instrumentality of this state  
17 that issues a license.

18 (6) "Obligee" means:

19 (a) a person to whom a support debt or support obligation is owed; or

20 (b) a public agency of this or another state or an Indian tribe that has the right to receive current or  
21 accrued support payments or that is providing support enforcement services under this chapter.

22 (7) "Obligor" means a person who owes a duty of support or who is subject to a subpoena or warrant  
23 in a paternity or child support proceeding.

24 (8) "Order suspending a license" means an order issued by a support enforcement entity to suspend a  
25 license. The order must contain the name of the obligor, the type of license, and, if known, the social security  
26 number of the obligor.

27 (9) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that  
28 provides sufficient security to ensure compliance with a support order and that incorporates voluntary or  
29 involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support  
30 debt and, if applicable, current and future support.

1 (10) "Recreational activity" means an activity for which a license or permit is issued by the department  
2 of fish, wildlife, and parks under Title 87, chapter 2, part 6 or 7, except 87-2-708 or 87-2-711, or under 87-2-505,  
3 87-2-507, 87-2-508, or 87-2-510.

4 (11) "Subpoena" means a writ or order issued by a court or the department in a proceeding or as part  
5 of an investigation related to the paternity or support of a child that commands a person to appear at a particular  
6 place and time to testify or produce documents or things under the person's control.

7 (12) "Support debt" or "support obligation" means the amount created by the failure to provide or pay:

8 (a) support to a child under the laws of this or any other state or under a support order;

9 (b) court-ordered spousal maintenance or other court-ordered support for the child's custodial parent;

10 or

11 (c) fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is  
12 authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and  
13 collection of child support or spousal maintenance or support.

14 (13) "Support enforcement entity" means:

15 (a) in IV-D cases, the department; or

16 (b) in all other cases, the district court that entered the support order or a district court in which the  
17 support order is registered.

18 (14) (a) "Support order" means an order that provides a determinable amount for temporary or final  
19 periodic payment of a support debt or support obligation and that may include payment of a determinable or  
20 indeterminate amount for insurance covering the child issued by:

21 (i) a district court of this state;

22 (ii) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

23 (iii) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

24 (iv) an administrative agency of another state or an Indian tribe with a hearing function and process  
25 similar to those of the department.

26 (b) If an action for child support is commenced under this part and the context so requires, support order  
27 also includes:

28 (i) judgments and orders providing periodic payments for the maintenance or support of the child's  
29 custodial parent; and

30 (ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the support

1 enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment,  
2 enforcement, and collection of child support or spousal maintenance or support.

3 (15) "Suspension" includes the withdrawal, withholding, revocation, forfeiture, or nonissuance of a license  
4 and license privileges.

5 (16) "Warrant" means a bench warrant, a warrant to appear, an order to show cause, or any other order  
6 issued by a court relating to the appearance of a party in a paternity or child support proceeding.

7 (17) "IV-D case" means a case in which the department is providing support enforcement services as  
8 a result of:

9 (a) an assignment of support rights under 53-2-613;

10 (b) a payment of public assistance;

11 (c) an application for support enforcement services under 40-5-203; or

12 (d) a referral for services from an agency of another state or an Indian tribe under the provisions of the  
13 Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act,  
14 the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act."

15

16 **Section 12.** Section 40-5-804, MCA, is amended to read:

17 **"40-5-804. Definitions.** For purposes of this part, the following definitions apply:

18 (1) "Child" means an individual, whether over or under 18 years of age, to whom or on whose behalf a  
19 legal duty of support is owed by a parent. The term includes but is not limited to a child enrolled or eligible for  
20 enrollment under a health benefit plan or individual insurance policy.

21 (2) "Child support guidelines" means guidelines adopted under the provisions of 40-5-209.

22 (3) "COBRA" means the federal Consolidated Omnibus Budget Reconciliation Act of 1985, under which  
23 dependent children of employees may continue to receive, for a limited time under specific circumstances, health  
24 plan coverage after termination of employment.

25 (4) "Department" means the department of ~~public health and human services as provided for in~~  
26 ~~2-15-2201~~ justice provided for in 2-15-2001.

27 (5) "Health benefit plan" or "plan" means a group health benefit plan or combination of plans, other than  
28 public assistance programs, that provides medical care or benefits for a child. The term includes but is not limited  
29 to a health maintenance organization, self-funded group, state or local government group health plan, church  
30 group plan, medical or health service corporation, or similar plan.

1 (6) "Individual insurance" means health or medical insurance coverage other than a group health benefit  
2 plan or public assistance that is or may be provided individually for a child.

3 (7) "Medical care" means diagnosis, cure, mitigation, treatment, or prevention of disease, illness, or  
4 injury, including well baby checkups, periodic examinations, and any other undertaking for the purpose of  
5 affecting any structure or function of the body.

6 (8) "Medical support order" means a judgment, decree, or order, including approval of a settlement  
7 agreement issued by a tribunal of competent jurisdiction, that provides for the medical care of a child and that  
8 complies with the requirements of this part.

9 (9) "Obligated parent" means the parent who is required by a medical support order to provide for the  
10 medical care of a child. The obligated parent is not necessarily the same as an obligor for child support.

11 (10) "Parent" means a father or mother and includes a child's guardian or other adult caretaker having  
12 lawful charge of the child.

13 (11) "Payor" or "payor of income" means a person, firm, corporation, association, union, employer,  
14 trustee, political subdivision, state agency, or any agent ~~thereof~~ of a listed entity who pays income to a parent on  
15 a periodic basis, who has or provides individual insurance or a health benefit plan, and who is subject to the  
16 jurisdiction of this state under Rule 4B of the Montana Rules of Civil Procedure or any employer under the  
17 Uniform Interstate Family Support Act.

18 (12) "Plan administrator" means the person or entity, including but not limited to a state or local  
19 government or church, that assesses and collects premiums, accepts and processes claims, and pays benefits.

20 (13) "Primary parent" means the parent with whom the child resides for the most 24-hour periods in a plan  
21 year.

22 (14) "Qualified medical child support order" means an order that meets the requirements of 29 U.S.C.  
23 1169.

24 (15) "Third-party custodian" means an agency or person other than a parent who:

25 (a) is authorized by legal process to have physical custody of a child;

26 (b) has actual physical custody of a child with the written consent of the parent or parents having legal  
27 custody of the child; or

28 (c) has actual physical custody of a child because of the parents' neglect, failure, or inability to provide  
29 for the child's support, medical care, and other needs.

30 (16) "Tribunal" means a court of competent jurisdiction or the department."

1  
2           **Section 13.** Section 40-5-901, MCA, is amended to read:

3           **"40-5-901. Definitions.** As used in this part, unless the context requires otherwise, the following  
4 definitions apply:

5           [(1) "Date of hire" means the first day that an employee starts work for which the employee is owed  
6 compensation by the payor of income.]

7           (2) "Department" means the department of ~~public health and human services provided for in 2-15-2201~~  
8 justice provided for in 2-15-2001.

9           [(3) (a) "Employee" means a person 18 years of age or older who performs labor in this state for an  
10 employer in this state for compensation and for whom the employer withholds federal or state tax liabilities from  
11 the employee's compensation.

12           (b) The term does not include an employee of a federal or state agency performing intelligence or  
13 counterintelligence functions if the head of the agency has determined that reporting pursuant to 40-5-922 with  
14 respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or  
15 intelligence mission.]

16           (4) "Employer" means a person, firm, corporation, association, governmental entity, or labor organization  
17 that engages an employee for compensation and withholds federal or state tax liabilities from the employee's  
18 compensation.

19           (5) "Foreign support order" means a support order entered or last modified by a court or administrative  
20 agency of another state, the District of Columbia, the Commonwealth of Puerto Rico, a territory or insular  
21 possession subject to the jurisdiction of the United States, an Indian tribe, or a foreign jurisdiction.

22           (6) "Income withholding" generally means procedures for directing a payor to withhold from an obligor's  
23 income an amount sufficient to pay the obligor's support obligation and to defray arrears that are or may become  
24 due. Specifically:

25           (a) when preceded by "IV-D", income withholding means the procedures set out in Title 40, chapter 5,  
26 part 4; and

27           (b) when preceded by "non IV-D", income withholding means those cases in which an immediate  
28 income-withholding order is issued under 40-5-315 after January 1, 1994.

29           (7) "Interstate case" means a case referred to the department by, or from the department to, another  
30 IV-D agency.

1 [(8) "Labor organization" means a labor union, union local, union affiliate, or union hiring hall.]

2 (9) "Obligee" means the payee under a support order or a person or agency entitled to receive support  
3 payments.

4 (10) "Obligor" means a person who is obligated to pay support under a support order.

5 (11) "Payor" means:

6 (a) an employer or person engaged in a trade or business in this state who engages an employee for  
7 compensation; or

8 (b) when used in context with income withholding, means a person, firm, corporation, association,  
9 employer, trustee, political subdivision, state agency, or agent paying income to an obligor on a periodic basis.

10 [(12) "Rehire" means the first day, following a termination of employment, that an employee begins to  
11 again perform work or provide services for a payor. Termination of employment does not include temporary  
12 separations from employment, such as unpaid medical leave, an unpaid leave of absence, or a temporary or  
13 seasonal layoff.]

14 (13) "Support order" means a judgment, decree, or order, whether temporary or final, that:

15 (a) is for the benefit of a child or a state agency;

16 (b) provides for monetary support, health care, arrearages, or reimbursement;

17 (c) may include related costs and fees, interest, and similar other relief; and

18 (d) may include an order for maintenance or other support to be paid to a child's custodial parent.

19 (14) "IV-D" or "IV-D case" means a case in which the department is providing services under the  
20 provisions of Title IV-D of the Social Security Act and the regulations promulgated under that act. A IV-D case  
21 also includes a case in which the department is collecting a support debt assigned to this or another state or an  
22 Indian tribe under Title IV-D. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L.  
23 1999.)"

24

25 **Section 14.** Section 40-6-116, MCA, is amended to read:

26 **"40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence or  
27 nonexistence of the parent and child relationship is determinative for all purposes.

28 (2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order  
29 that a substitute birth certificate be issued under 40-6-123.

30 (3) (a) The judgment or order may contain any other provision directed against the appropriate party to

1 the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the  
2 furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of  
3 the child.

4 (b) Except when the financial responsibility of a responsible parent is in the process of being determined  
5 pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision  
6 concerning the duty of child support.

7 (c) The judgment or order may direct the father to pay the reasonable expenses of the mother's  
8 pregnancy and confinement.

9 (4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in amount.

10 (b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered  
11 in lieu of periodic payments of support.

12 (c) The court may limit the father's liability for past support of the child to the proportion of the expenses  
13 already incurred that the court considers just.

14 (5) In determining the amount to be paid by a parent for support of the child and the period during which  
15 the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

16 (a) the needs of the child, including medical needs;

17 (b) the standard of living and circumstances of the parents;

18 (c) the relative financial means of the parents;

19 (d) the earning ability of the parents;

20 (e) the need and capacity of the child for education, including higher education;

21 (f) the age of the child;

22 (g) the financial resources and the earning ability of the child;

23 (h) the responsibility of the parents for the support of others;

24 (i) the value of services contributed by the custodial parent;

25 (j) the cost of day care for the child; and

26 (k) any custody arrangement that is ordered or decided upon.

27 (6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine  
28 the child support obligation by applying the standards in this section and the uniform child support guidelines  
29 adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be  
30 used in all cases, including cases in which the order is entered upon the default of a party and those in which the

1 parties have entered into an agreement regarding the support amount. A verified representation of a defaulting  
2 parent's income, based on the best information available, may be used when a parent fails to provide financial  
3 information for use in applying the guidelines. The amount determined under the guidelines is presumed to be  
4 an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the  
5 application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that  
6 particular case.

7 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state  
8 its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is  
9 inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have  
10 agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline  
11 amount must include a statement of the amount of support that would have ordinarily been ordered under the  
12 guidelines.

13 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's  
14 support, the court shall state its reasons for not ordering child support.

15 (d) Child support obligations established under this section are subject to the registration and processing  
16 provisions of Title 40, chapter 5, part 9.

17 (7) The judgment or order, whether temporary or final, concerning child support and each modification  
18 of a judgment or order for child support must include a medical support order as defined in 40-5-804.

19 (8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the  
20 support order, a support obligation established by judgment, decree, or order under this section, whether  
21 temporary or final, and each modification of an existing support obligation made under 40-6-118 must be enforced  
22 by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order  
23 that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless  
24 subject to withholding for the payment of support without need for an amendment to the support order or for any  
25 further action by the court.

26 (b) If a support order subject to income withholding is expressed in terms of a monthly obligation, the  
27 order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay  
28 period.

29 (c) If an obligor is excepted from paying support through income withholding, the support order must  
30 include as part of the order a requirement that whenever the case is receiving services under Title IV-D of the

1 Social Security Act, support payments must be paid through the department of ~~public health and human services~~  
2 justice as provided in 40-5-909.

3 (9) (a) If the district court establishes paternity or establishes or modifies a child support obligation, the  
4 judgment, decree, or order must include a provision requiring the parties to promptly file with the court and to  
5 update, as necessary, information on:

6 (i) identity of the party;

7 [(ii) social security number;]

8 (iii) residential and mailing addresses;

9 (iv) telephone number;

10 (v) driver's license number;

11 (vi) name, address, and telephone number of the party's employer; and

12 (vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or  
13 health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent  
14 information regarding coverage or, if the child is not covered, information as to the availability of coverage for the  
15 child through the party's employer.

16 (b) The order must further direct that in any subsequent child support enforcement action, upon sufficient  
17 showing that diligent effort has been made to ascertain the location of the party, the district court or the  
18 department of ~~public health and human services~~ justice, if the department is providing services under Title IV-D  
19 of the Social Security Act, may consider the due process requirements for notice and service of process to be  
20 met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party  
21 or the party's employer's address reported to the court.

22 (10) A judgment, decree, or order establishing a child support obligation under this part may be modified  
23 or adjusted as provided by 40-4-208 or, if the department of ~~public health and human services~~ justice is providing  
24 services under Title IV-D of the Social Security Act, may be modified or adjusted, by the department as provided  
25 for in 40-5-271 through 40-5-273, 40-5-277, and 40-5-278.

26 [(11) The social security number of a person subject to a paternity determination under this part must be  
27 recorded in the records relating to the matter. The recordkeeper shall keep the social security number from this  
28 source confidential, except that the number may be provided to the department of ~~public health and human~~  
29 ~~services~~ justice for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates  
30 on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

1

2           **Section 15.** Section 40-6-117, MCA, is amended to read:

3           **"40-6-117. Enforcement of judgment or order.** (1) If existence of the father and child relationship is  
4 declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under prior  
5 law, the court may, except as provided in 40-5-909 and 40-6-116(8), order support payments to be made to the  
6 mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit  
7 of the child under the supervision of the court.

8           (2) Full faith and credit must be given to a determination of paternity made by any other state, whether  
9 presumed by law, established through voluntary acknowledgment, or established by administrative or judicial  
10 processes.

11           (3) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies  
12 for the enforcement of judgments apply.

13           (4) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation  
14 must include a provision requiring the child support obligation to be paid, without need for further order of the  
15 court, to:

16           (i) the legal custodian of the minor child;

17           (ii) a person, organization, or agency to which the legal custodian voluntarily or involuntarily relinquishes  
18 actual physical custody of the child; or

19           (iii) any other person, organization, or agency entitled by law, assignment, or similar reason to receive  
20 or collect the child support obligation.

21           (b) If the department of ~~public health and human services~~ justice is providing services under Title IV-D  
22 of the Social Security Act, payment of support must be made through the department for distribution to the  
23 person, organization, or agency entitled to the payment.

24           (c) A judgment, decree, or order that omits the provision required by subsection (4)(a) is subject to the  
25 requirements of subsection (4)(a) without need for an amendment to the judgment, decree, or order or for any  
26 further action by the court."

27

28           **Section 16.** Section 41-3-446, MCA, is amended to read:

29           **"41-3-446. Contributions by parents or guardians for youth's care.** (1) If physical or legal custody  
30 of the youth is transferred to the department, the court shall examine the financial ability of the youth's parents

1 or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the  
2 youth, including the costs of necessary medical, dental, and other health care.

3 (2) If the court determines that the youth's parents or guardians are financially able to pay a contribution  
4 as provided in subsection (1), the court shall order the youth's parent or guardian to pay an amount based on the  
5 uniform child support guidelines adopted by the department of public health and human services pursuant to  
6 40-5-209.

7 (3) (a) Except as provided in subsection (3)(b), contributions ordered under this section and each  
8 modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under  
9 Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject  
10 to withholding for the payment of the contribution without need for an amendment of the support order or for any  
11 further action by the court.

12 (b) A court-ordered exception from contributions under this section must be in writing and must be  
13 included in the order. An exception from the immediate income-withholding requirement may be granted if the  
14 court finds that there is:

15 (i) good cause not to require immediate income withholding; or

16 (ii) an alternative arrangement between the department and the person who is ordered to pay  
17 contributions.

18 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be based  
19 upon:

20 (i) a written determination and explanation by the court of the reasons why the implementation of  
21 immediate income withholding is not in the best interests of the child; and

22 (ii) proof of timely payment of previously ordered support in cases involving modification of contributions  
23 ordered under this section.

24 (d) An alternative arrangement must:

25 (i) provide sufficient security to ensure compliance with the arrangement;

26 (ii) be in writing and be signed by a representative of the department and the person required to make  
27 contributions; and

28 (iii) if approved by the court, be entered into the record of the proceeding.

29 (4) Upon a showing of a change in the financial ability of the youth's parent or guardian to pay, the court  
30 may modify its order for the payment of contributions required under subsection (2).

1 (5) (a) If the court orders the payment of contributions under this section, the department shall apply to  
2 the department of ~~public health and human services~~ justice for support enforcement services pursuant to Title  
3 IV-D of the Social Security Act.

4 (b) The department of ~~public health and human services~~ justice may collect and enforce a contribution  
5 order under this section by any means available under law, including the remedies provided for in Title 40,  
6 chapter 5, parts 2 and 4."

7

8 **Section 17.** Section 41-5-1525, MCA, is amended to read:

9 **"41-5-1525. Contribution for costs -- order for contribution -- exceptions -- collection.** (1) If a youth  
10 is placed in substitute care, a youth assessment center, or detention requiring payment by any state or local  
11 government agency or committed to the department, the court shall examine the financial ability of the youth's  
12 parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition,  
13 attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody,  
14 and treatment of the youth, including the costs of necessary medical, dental, and other health care.

15 (2) If the court determines that a youth's parents or guardians are financially able to pay a contribution  
16 for adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention,  
17 or supervision as provided in subsection (1), the court shall order the youth's parents or guardians to pay a  
18 specified amount. The order must state to which state or local government agency all or a part of the contribution  
19 is due and in what order the payments must be made.

20 (3) If the court determines that the youth's parents or guardians are financially able to pay a contribution  
21 as provided in subsection (1), the court shall order the youth's parents or guardians to pay an amount attributable  
22 to care, custody, and treatment based on the uniform child support guidelines adopted ~~by the department of~~  
23 ~~public health and human services~~ pursuant to 40-5-209.

24 (4) (a) Except as provided in subsection (4)(b), contributions ordered under subsection (3) and each  
25 modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under  
26 Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject  
27 to withholding for the payment of the contribution without need for an amendment of the support order or for any  
28 further action by the court.

29 (b) A court-ordered exception from contributions under this section must be in writing and must be  
30 included in the order. An exception from the immediate income-withholding requirement may be granted if the

1 court finds that there is:

2 (i) good cause not to require immediate income withholding; or

3 (ii) an alternative arrangement between the department and the person who is ordered to pay  
4 contributions.

5 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be based  
6 upon:

7 (i) a written determination and explanation by the court of the reasons why the implementation of  
8 immediate income withholding is not in the best interests of the youth; and

9 (ii) proof of timely payment of previously ordered support in cases involving modification of contributions  
10 ordered under this section.

11 (d) An alternative arrangement must:

12 (i) provide sufficient security to ensure compliance with the arrangement;

13 (ii) be in writing and be signed by a representative of the department and the person required to make  
14 contributions; and

15 (iii) if approved by the court, be entered into the record of the proceeding.

16 (5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the  
17 court may modify its order for the payment of contributions required under subsection (3).

18 (6) (a) If the court orders the payment of contributions under this section, the department shall apply to  
19 the department of ~~public health and human services~~ justice for support enforcement services pursuant to Title  
20 IV-D of the Social Security Act.

21 (b) The department of ~~public health and human services~~ justice may collect and enforce a contribution  
22 order under this section by any means available under law, including the remedies provided for in Title 40,  
23 chapter 5, parts 2 and 4."

24

25 **Section 18.** Section 53-2-613, MCA, is amended to read:

26 **"53-2-613. Application for assistance -- assignment of support rights.** (1) Applications for public  
27 assistance, including but not limited to financial assistance or nonfinancial assistance, as defined in 53-2-902,  
28 and medical assistance; may be made in any local office of public assistance. The application must be submitted,  
29 in the manner and form prescribed by the department, and must contain information required by the department.

30 (2) A person who signs an application for financial assistance, as defined in 53-2-902, or for related

1 medical assistance assigns to the state, to the department, and to the county, if county funds were used to pay  
2 for services, all rights that the applicant may have to monetary and medical support from any other person in the  
3 applicant's own behalf or in behalf of any other family member for whom application is made. A person who signs  
4 an application for public assistance other than financial assistance, as defined in 53-2-902, or for related medical  
5 assistance may, in accordance with rules adopted by the department, be required to assign to the state, to the  
6 department, and to the county all rights that the applicant may have to monetary and medical support from any  
7 other person in the applicant's own behalf or on behalf of any other family member for whom application is made.

8 (3) The assignment:

9 (a) is effective for both current and accrued support, including unpaid support that accrued before the  
10 applicant received public assistance, and medical obligations;

11 (b) takes effect upon a determination that the applicant is eligible for public assistance; and

12 (c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued  
13 under the assignment that was owed prior to the termination of public assistance to a recipient.

14 (4) If a person who is the legal custodian and child support obligee under a support order relinquishes  
15 physical custody of a child to a caretaker relative without obtaining a modification of legal custody and the  
16 caretaker relative is determined eligible for public assistance on behalf of the child, the child support obligation  
17 is transferred by operation of law to the caretaker relative and may be assigned as provided in subsection (2).  
18 The transfer and assignment terminate when the caretaker relative no longer has physical custody of the child,  
19 except for any unpaid support still owing under the assignment at that time.

20 (5) Whenever a child support or spousal support obligation is assigned to the department pursuant to  
21 this section, the following provisions apply:

22 (a) If the support obligation is based upon a judgment or decree or an order of a court of competent  
23 jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse the  
24 cumulative total of public assistance money expended.

25 (b) A recipient or former recipient of public assistance may not commence or maintain an action to  
26 recover or enforce a delinquent support obligation or make any agreements with any other person or agency  
27 concerning the support obligation, except as provided in 40-5-202.

28 (c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over  
29 or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant  
30 to a judgment or decree or an order of the court until the department's child support enforcement division of the

1 department of justice has filed a written notice that:

2 (i) the assignment of current support amounts has been terminated; and

3 (ii) all assigned support delinquencies, if any, are satisfied or released.

4 (d) A recipient or former recipient of public assistance may not take action to modify or make any  
5 agreement to modify, settle, or release any past, present, or future support obligation unless the ~~department's~~  
6 child support enforcement division of the department of justice is given written notice under the provisions of  
7 40-5-202. Any modifications or agreements entered into without the participation of the department and the  
8 department of justice are void with respect to the state, the department, the department of justice, and the local  
9 office of public assistance.

10 (e) A support obligation assigned under this section may not be terminated, invalidated, waived, set  
11 aside, or considered uncollectible by the conduct, misconduct, or failure of a recipient or former recipient of public  
12 assistance to take any action or to cease any action required under a decree, judgment, support order, custody  
13 order, visitation order, restraining order, or other similar order."

14

15 **Section 19.** Section 53-4-260, MCA, is amended to read:

16 **"53-4-260. Child support payment pass-through and income disregard.** (1) For those families  
17 receiving monthly grants of temporary assistance for needy families, an amount equal to the amount of current  
18 child support collected on behalf of the family for the current month, not including arrearages, up to 30% of the  
19 total amount collected or \$100, whichever is greater, for each family, must be disregarded in determining the  
20 income and eligibility calculations for the grant, and that amount must be passed through to the family.

21 (2) The department shall use temporary assistance for needy families block grant funds received as  
22 federal special revenue for the purposes of subsection (1)."

23

24 **NEW SECTION. Section 20. Reorganization procedure.** The provisions of 2-15-131 through 2-15-137  
25 govern the transfer of the child support enforcement division from the department of public health and human  
26 services to the department of justice.

27

28 **NEW SECTION. Section 21. Directions to code commissioner -- coordination instruction.** The  
29 code commissioner is directed to revise any legislation passed by the 60th legislature by changing to the  
30 department of justice or the department of justice child support enforcement division any reference to the

1 department of public health and human services related to the enforcement of child support.

2

3 NEW SECTION. **Section 22. Effective date.** [This act] is effective July 1, 2007.

4 - END -